

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SEAN M. TRAPPER,
MICHAEL TRAPPER, and
CYNTHIA TRAPPER,

Plaintiffs,

v.

DECISION AND ORDER
10-CV-730

CREDIT CONTROL SERVICES, INC. d/b/a
CREDIT COLLECTION SERVICES, INC., and
AFFILIATED COMPUTER SERVICES, INC.,

Defendants.

This case, wherein plaintiffs seek to recover for defendants' alleged violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692 *et. seq.*, was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. §636(b)(1). On January 26, 2011, defendant Credit Control Services, Inc. ("CCS") filed a motion to dismiss plaintiffs' amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). On August 31, 2011 Magistrate Judge McCarthy issued a Report and Recommendation recommending that CCS' motion to dismiss be granted (Dkt. No. 23). The Magistrate Judge found that because plaintiffs' loans from Wachovia Educational Finance, Inc. were not in default, the FDCPA did not apply to defendant CCS.

Plaintiffs filed objections to the Report and Recommendation and

defendant CCS filed a response. Oral argument on the objections was held on October 21, 2011. By Order dated October 26, 2011, this Court adopted Magistrate Judge McCarthy's recommendation dismissing plaintiffs' amended complaint as to CCS. (Dkt. No. 28).

Defendant Affiliated Computer Services, Inc. ("ACS") initially answered the amended complaint instead of moving to dismiss. However, ACS later moved to dismiss the amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim, relying on the "points of authorities contained in the motion to dismiss [by defendant CCS] and Order granting said motion" (Dkt. No. 32). On September 18, 2012, Magistrate Judge McCarthy issued a Report and Recommendation recommending that defendant ACS' motion to dismiss the amended complaint be granted (Dkt. No. 36). The Magistrate Judge found that "since plaintiffs fail[ed] to raise any arguments distinguishing their allegations against ACS from those which they asserted against CCS, I recommend that ACS' motion to dismiss be granted for the reasons stated in my August 31, 2011 Report and Recommendation."

On September 30, 2012, plaintiffs filed objections to the Magistrate Judge's Report and Recommendation dismissing the amended complaint against ACS (Dkt. No. 37). ACS filed a response on October 11, 2012 (Dkt. No. 39). Plaintiffs' replied to ACS' response on November 12, 2012, (Dkt. No. 42), and the Court deemed the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon a *de novo* review, and after reviewing the submissions from the parties, the Court hereby adopts Magistrate Judge McCarthy's recommendation to grant defendant ACS' motion to dismiss the amended complaint.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, defendant ACS' motion to dismiss the complaint is granted. The Clerk of the Court is directed to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: February 20, 2013